

² Appellant has another appeal pending before the Board and is being addressed separately under Docket No. 15-267.

FACTUAL HISTORY

This case has previously been before the Board. By order dated July 19, 2005, the Board remanded the case to OWCP for reconstruction of the record.³ By decision dated March 18, 2014, the Board found that OWCP had properly denied a review of the merits of appellant's claim for a schedule award, as appellant had failed to meet the criteria for a merit review, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).⁴

Appellant, a 34-year-old mail carrier, filed a Form CA-2, occupational disease claim on March 6, 2000, alleging that she developed a bilateral foot condition causally related to employment factors. OWCP accepted the claim for bilateral joint derangement, bilateral calcaneal spur, bilateral bunion, and bilateral plantar fibromatosis. Appellant received wage-loss compensation for temporary total disability until June 12, 2009 when she was placed on the periodic rolls.

Appellant's treating physician released her to return to work part time and appellant was provided notice by OWCP of suitable work on December 2, 2009. Shortly thereafter appellant underwent additional surgery for her accepted condition and her treating physician removed her from work.

Appellant applied for disability retirement in 2010.

By decision dated March 25, 2011, OWCP reduced appellant's wage-loss compensation because the weight of the medical evidence established that she was no longer totally disabled for work due to effects of her accepted bilateral foot conditions and that the evidence of record showed that the constructed position of receptionist represented her wage-earning capacity.

By Form EN1032 dated October 31, 2011, appellant reported that she had been assigned a CSA number, but denied having received any disability retirement or regular retirement payments during the past 15 months.⁵

Appellant requested reconsideration and, by decision dated November 18, 2011, OWCP denied modification of its wage-earning capacity decision.

By letter dated July 2, 2012, OPM advised appellant that it had approved her application for disability retirement. It informed her that she was not entitled to receive annuity payments from both OPM and OWCP for the same period of time and could elect which benefit she wanted to receive.

Appellant again requested reconsideration and, by decision dated August 22, 2012, OWCP again denied modification of the March 25, 2011 wage-earning capacity decision.

³ Docket No. 05-142 (issued July 19, 2005).

⁴ Docket No. 13-2147 (issued March 18, 2014).

⁵ A CSA number is received upon application for retirement from the Office of Personnel Management (OPM).

In response to OPM's July 2, 2012 letter, on March 21, 2014 appellant elected to continue receiving OWCP compensation benefits under FECA.

On April 2, 2013 appellant completed a Federal Employees' Health Benefits (FEGLI) Standard Form 2818, entitled "Continuation of Life Insurance Coverage as an Annuitant or Compensation" on which she checked boxes indicating that she elected "No Reduction" as the level of her basic life insurance in retirement/compensation.

By letter dated June 21, 2013, OPM advised OWCP that appellant was eligible to continue receiving coverage under the FEGLI program. It indicated that the premiums were based on the "No Reduction" to basic option which appellant elected in choosing her postretirement life insurance, with a "Basic" salary of \$54,619.00; the commencing date for postretirement life insurance deductions was May 23, 2010. The letter asked OWCP "please deduct for Code Y1," with basic and optional coverage to begin on OWCP's commencing date.

After an August 12, 2013 request for reconsideration, OWCP again, by decision dated September 4, 2013, denied modification of the March 25, 2011 wage-earning capacity decision.⁶

On November 26, 2013 OWCP issued a preliminary determination that an overpayment had occurred in the amount of \$5,178.80 from May 23, 2010 to October 19, 2013. It noted that the overpayment had occurred because the appropriate life insurance premiums had not been deducted from her continuing compensation payments for that period.⁷ OWCP further advised that she had been found without fault for the creation of the overpayment. It advised appellant that if she disagreed with the fact or amount of the overpayment she could submit new evidence in support of her contention or request a prerecoupment hearing. OWCP further advised appellant that when she was found without fault in the creation of the overpayment, recovery might not be made if it could be shown that such recovery would defeat the purpose of the law or would be against equity and good conscience.

On December 18, 2013 appellant responded to the November 26, 2013 determination by requesting waiver of the overpayment. She submitted the Form OWCP-20 overpayment questionnaire and listed her expenses and assets.

In a decision dated January 10, 2014, OWCP finalized the preliminary determination regarding the overpayment of \$5,178.80. It found that appellant was not entitled to waiver because she had failed to complete the attached Form OWCP-20 overpayment questionnaire and had failed to submit any supporting documentation.

⁶ That decision is currently on appeal to the Board. *Supra* note 2.

⁷ In OWCP pay rate worksheets dated November 12, 2013, it was indicated that appellant had an overpayment of \$5,178.80 based on postretirement, zero reduction premiums not being deducted from her monthly compensation checks from May 23, 2010 to October 19, 2013. It calculated the overpayment by adding the deductions from three periods: May 23 to June 5, 2010, in which it multiplied \$4.05 times 14 days, for a total of \$56.70; June 6, 2010 to January 14, 2012, multiplying \$113.39 times 21 pay periods (based on a 28-day pay period), totaling \$2,381.19; and January 15, 2012 to October 19, 2013 multiplying \$119.17 times 23 pay periods (based on a 28-day pay period), totaling \$2,740.91, for an overall overpayment of \$5,178.80.

LEGAL PRECEDENT

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in basic life insurance with one or more options. The coverage for basic life is effective unless waived and premiums for basic and optional life coverage are withheld from the employees' pay. With certain restrictions, insurance benefits continue postretirement. Insurance remains in effect until canceled and premiums due are to be deducted from the injured employees' compensation payments.⁸ When FEGLI premiums, including postretirement insurance premiums are incorrectly withheld, the entire amount of the unpaid premium is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.⁹

OWCP procedures state that the reason for any overpayment must be clearly stated in the preliminary decision and OWCP should provide a clearly written explanation indicating how the overpayment was calculated.¹⁰

ANALYSIS

The record shows that appellant received compensation during the period May 23, 2010 to October 19, 2013. OWCP determined that an overpayment had been created because postretirement life insurance premiums had not been properly deducted from her compensation for that period. It provided worksheets explaining that premiums based on the postretirement basic life premiums at the "No Reduction" level had not been deducted during the three different premium periods from May 23, 2010 to October 19, 2013, for a total overpayment of \$5,178.80. OWCP failed to explain why these premiums would have been retroactive to May 23, 2010. The letter from OPM is dated June 21, 2013 yet it states, without explanation, that the "commencing date" for the postretirement deductions was May 23, 2010. OWCP must provide the reason for the overpayment and it has failed to properly explain the basis for the retroactive commencement date of May 23, 2010. There is no evidence in the record that establishes the accuracy of that date. Although there is some indication that appellant had applied for disability retirement in 2010 and appellant had been on the periodic rolls since June 12, 2009, appellant's 2013 election of the "No Reduction" level of basic life insurance does not provide the evidence necessary for the retroactive commencement date for those premiums.

Accordingly, the Board finds that, without supporting documentation, OWCP improperly found that appellant received an overpayment of compensation of \$5,178.80 during that period.¹¹

⁸ 20 C.F.R. §§ 870-73.

⁹ See *James Lloyd Otte*, 48 ECAB 334, 337 (1997).

¹⁰ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4a (May 2004).

¹¹ In light of this disposition, the Board finds it premature to address the waiver issue.

CONCLUSION

The Board will set aside OWCP's finding of fact of overpayment. Upon return of the case record, OWCP shall further develop the case as necessary and thereafter issue an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2014 decision of the Office of Workers' Compensation Programs is set aside and remanded in accordance with this opinion.

Issued: June 5, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board